



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Richard Carter, M.D.
Decision and Order**

On October 15, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard Carter, M.D. (Registrant), of Tifton, Georgia. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. AC2515596 on the ground that he "ha[s] no state authority to handle controlled substances." Government Exhibit (GX) 2 (Order to Show Cause) to Government's Request for Final Agency Action (RFAA), at 1 (citing 21 U.S.C. § 824(a)(3)). For the same reason, the Order also proposed the denial of "any applications for renewal or modification of such registration and any applications for any other DEA registrations." *Id.*

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Certificate of Registration No. AC2515596, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 2617 Wilson Avenue, Tifton, Georgia. *Id.* The Order also alleged that this registration does not expire until August 31, 2020. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on June 12, 2018, the Georgia Composite Medical Board (GCMB) "issued an Order of Summary Suspension summarily suspending [Registrant's] Georgia medical license." *Id.* The Show Cause Order alleged that, as a result, he is "currently without authority to handle controlled substances in the State of Georgia, the [S]tate in which [he is] registered with the DEA." *Id.* Based on his "lack of authority to handle controlled substances in the State of Georgia," the

Order asserted that “DEA must revoke” his registration. *Id.* at 1-2 (citing 21 U.S.C. § 824(a)(3); 21 CFR 1301.37(b)).

The Show Cause Order notified Registrant of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* at 2 (citing 21 CFR § 1301.43). The Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

With respect to service, a Diversion Investigator (DI) in the Savannah Resident Office of DEA’s Atlanta Field Division executed a Declaration on February 11, 2019, stating that on November 26, 2018, he “physically mailed the [Show Cause Order] to Registrant’s home address at 2617 Wilson Ave. N., Tifton, GA 31794, via United States Postal Service certified mail, return receipt requested.” GX 4 (Declaration of DI) to RFAA, at 1-2. The DI also stated in his Declaration that on November 30, 2018, he received the signed return receipt for the Show Cause Order he had mailed on November 26, 2018. *Id.* at 2. The DI attached to his Declaration and authenticated a return receipt from the U.S. Postal Service bearing what appears to be Registrant’s signature and indicating that the mailing was delivered to Registrant’s address on November 28, 2018. *See id.*; Exhibit (Ex.) B to GX 4, at 2.¹ The DI also attached and authenticated a printout from the U.S. Postal Service’s website showing that a package with a tracking number matching the one on the return receipt was delivered to Registrant’s address on November 28, 2018. *See* GX 4 to RFAA, at 2; Ex. C to GX 4, at 1-2. I therefore find that the Government accomplished service on November 28, 2018.

¹ The DI stated that on November 26, 2018, he mailed a second copy of the Show Cause Order to Registrant’s home address “via first-class United States mail, postage prepaid.” *Id.* He further stated that “[t]he second copy of the [Show Cause Order] that [he] had mailed via first-class United States mail, postage prepaid, did not come back to the Savannah Resident Office.” *Id.*

On March 8, 2019, the Government forwarded its Request for Final Agency Action and evidentiary record to my Office. In its Request, the Government represents that more than 30 days have passed since Registrant had been served with the Show Cause Order and that “Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA regarding the Order served on him, including the filing of any written statement in lieu of a hearing.” RFAA, at 1-2. Based on the Government’s representation and the record, I find that more than 30 days have passed since the Show Cause Order was served on Registrant, and he has neither requested a hearing nor submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(d). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government and the findings below. *See id.* I make the following findings.

FINDINGS OF FACT

Registrant is the holder of DEA Certificate of Registration No. AC2515596 pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner at the registered address of Richard Carter MD PC, 2617, Tifton, Georgia. GX 1 (Certification of Registration Status) to RFAA, at 1. The “mail to address” is Richard Carter MD PC, 2617 Wilson Avenue, Tifton, Georgia. *Id.* This registration does not expire until August 31, 2020. *Id.*

On June 12, 2018, the GCMB issued an “Order of Summary Suspension” (Suspension Order) suspending Registrant’s Georgia medical license based largely on the findings of the North Carolina Medical Board that Registrant “suffered from severe alcohol use disorder” and “was unable to practice medicine with reasonable skill and safety to patients.” GX 3 to RFAA,

at 3.² The GCMB found that Registrant had not been examined since 2014 “with regard to whether he suffers from a mental or physical condition that would affect his ability to practice medicine.” *Id.* The GCMB also found that Registrant “has not been treated for alcohol use disorder nor has a physician with expertise in addiction psychiatry determined that [Registrant] does not suffer from that condition or that [his] condition is in remission.” *Id.* As a result of these findings, the GCMB “SUMMARILY SUSPENDED” Registrant’s license to practice medicine in Georgia because the GCMB concluded that Registrant’s “continued practice of medicine poses a threat to the public health, safety, and welfare and imperatively requires emergency action.” *Id.* at 4. Finally, the Suspension Order further states that Registrant’s Georgia medical license “will expire on January 31, 2019.” *Id.* at 2.

In addition, I take official notice of the results of a search of the GCMB’s license verification webpage showing that, as of the date of this Decision, Registrant’s Georgia medical license remains “suspended.”³ Accordingly, I find that Registrant currently does not possess a license to practice medicine in the State of Georgia, the State in which he is registered with the

² Specifically, the Suspension Order states that the North Carolina Medical Board (NCMB) “summarily suspended” Registrant’s North Carolina medical license in December 2015 “based on, in part, a determination by a healthcare provider that [Registrant] suffered from severe alcohol use disorder, that [Registrant’s] condition was untreated and unmonitored, and that [Registrant] continued to practice medicine.” *Id.* Registrant eventually “agreed to have his [North Carolina medical] license placed on inactive status . . . effective March 18, 2016” after the NCMB “concluded that [Registrant] was unable to practice medicine with reasonable skill and safety to patients.” *Id.*

³ See <https://gcmb.mylicense.com/verification/SearchResults.aspx>. Under the Administrative Procedure Act (APA), an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” U.S. Dept. of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA’s regulations, Registrant is “entitled on timely request to an opportunity to show to the contrary.” 5 U.S.C. § 556(e); see also 21 CFR 1316.59(e). To allow Registrant the opportunity to refute the facts of which I take official notice, Registrant may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed. The Government also attached an unverified copy of the GCMB’s license verification page as an exhibit to its Request for Final Agency Action that also shows that Registrant’s Georgia medical license is suspended. See GX 5 to RFAA.

DEA – both because the GCMB suspended his Georgia medical license on June 12, 2018 and because his Georgia license expired on January 31, 2019.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), “upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has long held

that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he engages in professional practice. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR 27616 (1978).

Moreover, because "the controlling question" in a proceeding brought under 21 U.S.C. § 824(a)(3) is whether the holder of a practitioner's registration "is currently authorized to handle controlled substances in the [S]tate," *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the GCMB summarily suspended Registrant's state medical license.

What is consequential is my finding that Registrant is no longer currently authorized to dispense controlled substances in the State of Georgia, the State in which he is registered. Specifically, the GCMB's decision to suspend Registrant's medical license also means that Registrant is currently without authority to dispense controlled substances under the laws of Georgia. *See, e.g., Ga. Code Ann. §§ 43-34-21* (2009) (defining "practice of medicine" to include prescribing any form of treatment); *43-34-26(a)* (2010) (requiring state license to obtain the right to practice medicine). Accordingly, Registrant is not entitled to maintain his DEA registration, and I will therefore order that his registration be revoked.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration No. AC2515596, issued to Richard Carter, M.D., be, and it hereby is, revoked. I further order that any pending application of Richard Carter to renew or modify the above registration, or any pending application of Richard Carter for any other DEA registration in the State of Georgia, be, and it hereby is, denied. This Order is effective [INSERT DATE THIRTY (30) DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: March 22, 2019.

Uttam Dhillon,
Acting Administrator.

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